

woven right-angled diagonal lines, but only longitudinal lines, with one or two right-angled lines crossing them at the end of the opening. This display is not that, nor much like that, of the patented improvement, or difference; and infringement does not appear to be made out. Bill dismissed.

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MESINGER BICYCLE SADDLE CO. v. HUMBER et al.

(Circuit Court, S. D. New York. May 11, 1899.)

1. DESIGN PATENTS—INFRINGEMENT.

Where the similarity of appearance between designs for bicycle saddles was due rather to the general similarity of such saddles than to the particular similarity between the two saddles in question, and the patent was not of a fundamental character, *held* there was no infringement.

2. SAME—BICYCLE SADDLES.

The Mesinger patent, No. 25,423, for a design for a bicycle saddle having a centrally disposed opening upon which are displayed lines extending "both at right angles and diagonally to each other, said lines being interwoven, as shown," construed, and *held* not infringed.

In Equity.

Robert C. Mitchell, for plaintiff.

John C. Dewey, for defendant.

WHEELER, District Judge. This cause has been reheard on petition, suggesting that the invention sought to be secured by the Mesinger design patent in question, No. 25,423, dated April 21, 1896, for a bicycle saddle, preceded the Cutting design patent, No. 24,988, dated December 17, 1895, held inadvertently to be an anticipation. The Hunt patent, No. 489,308, dated January 3, 1893, for a velocipede saddle, unquestionably antedates the Mesinger invention. It shows "an outline of general pelecoidal shape having a centrally disposed opening, whose contour is" somewhat "parallel with said outline," if not substantially so. It might be thought to be an anticipation but for the provision in the specification of the Mesinger patent that "upon the field inclosed by the outline of said central opening are displayed lines extending both at right angles and diagonally to each other, said lines being interwoven, as shown." As the only claim is for "the design of a bicycle saddle substantially as herein shown and described," this display upon this field is material, and especially so in view of the prior pelecoidal shapes and central openings. The alleged infringement does not display lines at right angles to each other, except at the extreme ends across longitudinal lines, nor lines diagonally to each other at all. If the question about this was as to mechanical equivalents to parts of a foundation patent, these longitudinal lines might perhaps be considered to be such; but, as this is a question of appearance only, and of appearance of this field made essential by the terms of the patent, it does not seem to be such. The similarity of appearance between this and the design of the patent grows out of the general similarity of such saddles, rather than out of the particular similarity of the defendant's saddles to the dif-

ference between the design of the saddles of the patent and those of prior structures. *Tower v. Pencil Co.* (April 4, 1899) 94 Fed. 361; *Playing-Card Co. v. Spalding* (April 24, 1899) Id. 822. Bill dismissed.

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FARR & BAILEY MFG. CO. v. INTERNATIONAL NAV. CO.

(District Court, E. D. Pennsylvania. April 28, 1899.)

1. SHIPPING—INJURY TO CARGO—SEAWORTHINESS—EFFECT OF HARTER ACT.

Section 3 of the Harter act (2 Supp. Rev. St. p. 81) does not relieve the owner from the duty of furnishing a seaworthy vessel at the beginning of the voyage, nor affect his liability for damage to the cargo arising from unseaworthiness, but only exempts him from liability for damage arising from the risks therein designated when due diligence has been used to make the vessel seaworthy, etc. There is no expressed intention in the statute to replace the carrier's obligation under the general maritime law to furnish a seaworthy vessel by the less extensive obligation to exercise due diligence to that end, and it cannot be extended by construction beyond its terms.

2. SAME—FAULT IN MANAGEMENT OF VESSEL.

After a vessel had been out of port only four or five days, and had encountered no severe weather or known accidents, both covers of one of her ports were found to be open, and water had entered and damaged cargo in the compartment into which the port opened. Neither the covers nor the surroundings of the port were injured, and the hatches had been battened down since the beginning of the voyage. *Held*, that neither evidence that the vessel was inspected the day before sailing, and the port believed to be closed, nor even the positive testimony of witnesses that the covers were closed and screwed fast when the vessel sailed, was sufficient to establish such fact, but that, under the rule laid down in *The Sylvia*, 19 Sup. Ct. 7, 171 U. S. 462, the condition of the port did not render the vessel unseaworthy, and the failure to close it before the injury was received by the cargo was a fault or error in the management of the vessel during the voyage, for which the owners are relieved from liability under section 3 of the Harter act.

This was a libel in admiralty to recover for damage to cargo alleged to have arisen from unseaworthiness of the vessel.

John F. Lewis and Horace L. Cheyney, for libelant.

Biddle & Ward and J. Rodman Paul, for respondent.

McPHERSON, District Judge. This action is brought to recover damages to cargo under the following state of facts: The respondent is the owner of the steamship *Indiana*, a vessel plying between the ports of Liverpool and Philadelphia. In May, 1895, 20 bales of bur-laps, in good condition, were received by the vessel in Liverpool, consigned to the libelant in Philadelphia, and a bill of lading was given therefor. The bales were stowed, with some other goods, in compartment No. 3 of the lower steerage deck; but the compartment was not full, only one tier of cargo, two or three feet high, covering the floor, so that access to the ports was easy and unobstructed. Four or five days after the vessel left Liverpool, water was discovered in the compartment; and when the hatches were opened, a day or two later, it was found that the after port on the starboard side was admitting water freely as the vessel rolled. Both covers of the port